

State of Maine
Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of November 12, 2013
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State of Maine
Board of Licensure in Medicine
137 SHS, 161 Capitol Street
Augusta, Maine 04333-0137
Minutes of November 12, 2013

Board Members Present

Maroulla Gleaton, M.D, Chairman
David D. Jones, M.D., Board Secretary
David R. Andrews, M.D.
Louisa Barnhart, M.D.
Cheryl Clukey
David H. Dumont, M.D
Dana Dyer
David Nyberg, Ph.D.
Peter J. Sacchetti, M.D.

Board Staff Present

Randal C. Manning, Executive Director
Mark C. Cooper, M.D., Medical Director
Jean M Greenwood, Administrative Assistant
Kathryn Levesque, Board Investigator
Tim Terranova, Consumer Assistant

Attorney General's Office Staff
Dennis Smith, Assistant Attorney General
Detective James Gioia

The Board meets in public session with the exception of the times listed below, which are held in executive session. Executive sessions are held to consider matters which, under statute, are confidential (1 M.R.S. §405) and 10 M.R.S.A. §8003-B, and 22 M.R.S. § 1711-C). The Board moved, seconded, and voted the following executive session times. During the public session of the meeting, actions are taken on all matters discussed during executive session. Discussions are projected on a screen by PowerPoint projection.

PUBLIC SESSIONS

9:16 a.m. – 9:17 a.m.
10:55 a.m. – 11:11 a.m.
12:08 p.m. – 12:11 p.m.
12:11 p.m. – 12:46 p.m.
12:46 p.m. – 12:47 p.m.
2:33 p.m. – 2:34 p.m.
2:45 p.m. – 4:48 p.m.
4:48 p.m.

PURPOSE

Call to Order
Recess
Public Session
Noon Recess
Public Session
Public Session
Public Session
Adjournment

EXECUTIVE SESSION

9:17 A.M. -10:55 a.m.
11:11 a.m. – 12:08 p.m.
12:47 p.m. – 2:33 p.m.
2:34 p.m. – 2:45 p.m.

Complaints
Informal Conference
Complaints
Complaints and Assessment and Direction

I. Call to Order

Dr. Gleaton called the meeting to order at 9:03 a.m.

A. Amendments to Agenda (None)

B. Scheduled Agenda Item: 11:00 A.M. Informal Conference CR 12-201 Arthur Blake, M.D.

II. Complaints

1. Letters of Guidance

a. CR12-102 Robert H. Abrams, M.D.

Dr. Andrews moved to approve the letter of guidance to Dr. Abrams. Mr. Dyer seconded the motion, which passed unanimously.

b. CR12-203 Paul L. Minot, M.D.

Dr. Dumont moved to approve the letter of guidance to Dr. Minot. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Barnhart recused.

c. CR13-107 Bethany T. Lake, M.D.

Dr. Jones moved to approve the letter of guidance to Dr. Lake. Dr. Andrews seconded the motion, which passed unanimously.

2. CR13-142

Dr. Andrews moved to dismiss CR13-142. Dr. Jones seconded the motion, which passed unanimously.

The patient alleges inappropriate treatment and unprofessional behavior by his hematologist who was reluctant to provide medications and medical care for his non-hematologic conditions. The doctor responds that his specialist care was always respectful and dignified. Record review showed good medical care and documentation, as well as multiple attempts by various clinicians and staff to help the patient establish a primary care physician who could deal with his non-hematologic issues. These efforts were well meaning and justified, but unsuccessful. The allegations are not supported by the record.

3. CR12-103 Stephen H. Doane, M.D.

Dr. Jones moved to order an Adjudicatory Hearing in the matter of CR12-103 Stephen H. Doane, M.D. with instructions to the Assistant Attorney General regarding a consent agreement. Dr. Nyberg seconded the motion, which passed unanimously.

4. CR12-104 Cameron R. Bonney, M.D.

Dr. Barnhart moved to order an Adjudicatory Hearing in the matter of CR12-104 Cameron R. Bonney, M.D. with instructions to the Assistant Attorney General regarding a consent agreement. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Nyberg recused.

5. CR13-126

Dr. Barnhart moved to dismiss CR13-126. Dr. Jones seconded the motion, which passed unanimously.

A patient complains of loss of privacy rights when the physician collaborates with others within the team caring for this patient. This patient also disputes issues with his diagnosis, and the physician's recommended change in medication.

The physician replies that he has cared for this patient for many years and the diagnoses have not changed. Records show the physician offered medications in a competent fashion but they were rejected by the patient. The physician acknowledges his loss of effectiveness in the relationship and has requested the patient be assigned to another practitioner. Appropriate alternative therapy by non-physician professionals has been offered and continues to be offered.

6. CR12-153 David Inger, M.D.

Dr. Gleaton moved to dismiss, with a letter of guidance CR12-153 David Inger, M.D. Dr. Dumont seconded the motion, which passed unanimously.

A patient's husband complains about the care his wife received from her primary care physician. His specific concerns centered on the physician's prescribing of controlled substances and that his wife may have died as a result of these prescriptions. Extensive review over several months reveals that the physician and others in the larger group he practices with are making substantial changes to improve prescribing practices. The physician is to be commended for his willingness to initiate these changes, and he should continue his work in this area. This case is to be dismissed with a letter of guidance encouraging the physician to continue his efforts in the following areas:

1. Recognize the importance of using Universal Precautions to monitor prescriptions of controlled substances to all patients.
2. Be diligent about denying early prescription refills.
3. Be thoughtful about the use of chronic narcotics in combination with other drugs and their potential side effects/interactions.
4. Match the use of opioids with demonstrated function rather than subjective reports of pain experience.
5. Be aware of the special concerns about prescribing methadone for pain; because although it comprises only 5% of opioid prescribing, it is related to 33% of opioid related deaths.

The Board recommends random pill counts yearly, at a minimum, for every patient prescribed controlled substances on a chronic basis.

7. CR12-233

Dr. Dumont moved to investigate further CR12-233. Dr. Jones seconded the motion, which passed unanimously.

8. CR12-172

Dr. Dumont moved to investigate further CR12-172. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Andrews recused.

9. CR13-112

Dr. Jones moved to investigate further CR13-112. Mr. Dyer seconded the motion, which passed unanimously.

10. CR13-127

Dr. Andrews moved to dismiss CR13-127. Dr. Jones seconded the motion, which passed unanimously.

The patient alleges that the surgeon kept him waiting many months after a request was made for his initial consultation due to a painful condition. The complainant also alleges that the surgeon initially recommended surgery but then decided otherwise because the patient had retained a personal injury lawyer. The doctor denied the allegations. Review of the medical record was not supportive of the patient claims.

11. CR13-130

Ms. Clukey moved to investigate further CR13-130. Dr. Dumont seconded the motion, which passed unanimously.

12. CR13-136

Dr. Dumont moved to dismiss CR13-136. Dr. Jones seconded the motion, which passed 8-0-0-1 with Mr. Dyer recused.

This patient alleges that the physician did not listen adequately to her complaints about medication side effects. In addition, she feels she should not have to pay for her care since she was not satisfied with the outcome.

Review of the record shows appropriate medical evaluation, care, and follow-up. Specific issues with problems in communication at the office visit could not to be assessed adequately; however, the patient had the opportunity to re-address her concerns after her lab tests were completed.

Concern about bills was complicated by a change in the patient's phone number, and now the physician and his staff are willing to compromise on this issue.

13. CR13-138

Ms. Clukey moved to dismiss CR13-138. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Andrews recused.

A patient complains about communication issues, surgical outcome, ultrasound testing, billing, and insurance issues. Review of the records indicates reasonable medical care regarding patient communication, surgical procedure, testing, and billing practices. The physician went out of his way to try to help get insurance coverage of the procedure for this patient; ultimately, however, he cannot control what insurance will cover. There is evidence in the record that the patient was aware of the uncertainty of the coverage but consented and went through with the procedure willingly.

14. CR12-101 Michael P. Durr, M.D.

[SEE APPENDIX A ATTACHED]

Dr. Andrews moved accept Dr. Durr's offer to surrender his license while under investigation. Mr. Dyer seconded the motion, which passed unanimously.

15. CR12-221 Barry L. Campbell, P.A.-C.

Dr. Andrews moved to dismiss with a letter of guidance CR12-221 Barry L. Campbell, P.A.-C. Mr. Dyer seconded the motion, which passed 8-0-0-1 with Dr. Jones recused.

A complaint was initiated against the physician assistant after the Board received notice of a five-day suspension by his employer. The P.A. had requested a prescription for opioid medication from colleagues for an exacerbation of a personal medical condition. The respondent stated that he was a patient of the practice where he worked, and he believed it would be appropriate to make such a request in the absence of his primary provider and without a personal office visit. Evaluations of the respondent indicated no evidence of impairment, and there appeared to be extenuating issues that could have influenced his perception of such boundary violations. Actions have been taken by the respondent, and further recommendations have been made to prevent recurrence of such transgressions.

Letter of Guidance

1. Recognize that it is never appropriate to request a controlled substance prescription from any provider outside the context of a personal clinical visit.
2. The Board encourages ongoing insight-directed professional care.

16. CR13-83

Dr. Andrews moved to investigate further CR13-83. Dr. Jones seconded the motion, which passed unanimously.

17. CR13-84

Dr Jones moved to hold an Informal Conference in the matter of CR13-84. Mr. Dyer seconded the motion, which passed unanimously.

18. CR13-168

Dr. Jones moved to hold an Informal Conference in the matter of CR13-168. Mr. Dyer seconded the motion, which passed unanimously.

19. CR13-96

Dr. Dumont moved to investigate further CR13-96. Dr. Andrews seconded the motion, which passed unanimously.

20 CR13-100

Mr. Dyer moved to hold an Informal Conference in the matter of CR13-100. Dr. Jones seconded the motion, which passed unanimously.

21 CR13-101

Dr. Barnhart moved to dismiss CR 13-101. Dr. Andrews seconded the motion, which passed unanimously.

The guardian of a teen patient complains the physician was disrespectful during contentious hospitalization discussions with many conflicting interests. In addition, there were concerns about contacting family members without the guardian's written permission.

The physician was the representative of a treatment team who collectively encouraged alternatives to a prolonged hospitalization. The physician re-involved family members previously present at team meetings to try to resolve this conflict, but he admits he did not obtain formal permission from the guardian to do this.

The record was reviewed and the considerable conflict of interests is noted. It is impossible to know if this physician could have been more respectful in these discussions about the patient's care. This complaint does not rise to the level of discipline.

22. CR13-105

Dr. Dumont moved to hold an Informal Conference in the matter of CR 13-105. Dr. Nyberg seconded the motion, which passed 7-0-0-2 with Dr. Gleaton and Dr. Barnhart recused.

23. CR13-116

Dr. Andrews moved to investigate further CR13-116. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Barnhart recused.

24. CR13-120

Mr. Dyer moved to dismiss CR13-120. Dr. Jones seconded the motion, which passed unanimously.

This is a complex patient with numerous documented medical issues. The patient feels the physician has not treated her with adequate respect and consideration subsequent to her falling and breaking her arm. Review of the medical record demonstrates an appropriate standard of care provided by this physician.

25. CR13-125 Robert G. Carpenter, M.D.

Ms. Clukey moved to dismiss with a letter of guidance CR13-125 Robert G. Carpenter, M.D. Dr. Dumont seconded the motion, which passed unanimously.

An eighty-year-old patient alleges the physician acted inappropriately during her initial appointment as a new patient. During a physical exam, the physician stood behind her, lifted her shirt, and undid her bra. The patient was very surprised and asked what he was doing. The physician said he was going to do a breast exam, looking for breast cancer. The patient states she was not prepared for what was to happen and was disturbed there was no chaperone in the room for this kind of exam. The physician apologizes for not explaining what his exam entailed, for not asking her permission to do a breast exam, and for not having a female chaperone in attendance. The physician states he consulted with his medical advisor and received counseling regarding patient rights. He has changed his behavior and office policies regarding communication and the need to ask the patient if a chaperone is requested.

The Letter of Guidance will emphasize:

1. The importance of offering a chaperone if an exam will be focusing on sensitive areas of the body.
2. The importance of specifically preparing and communicating with a patient as to what will take place during a physical exam.

26. CR13-146

Mr. Dyer moved to dismiss CR 13-146. Dr. Jones seconded the motion, which passed 8-0-0-1 with Dr. Andrews recused.

A young patient complains about the care he received, and the misuse of his lost blood, when he presented emergently hemorrhaging from a routine tonsillectomy done nine days previously. Review of the record reveals excellent medical care considering the emergent nature of hemorrhage experienced by the patient. Exact amounts of blood loss in this emergent situation

are difficult to ascertain; however, it is clear from the laboratory work done in the Emergency Room and then post operatively that there had to have been significant blood loss. There is no evidence in the record that the patient's blood was misused.

27. CR13-147

Dr. Dumont moved to investigate further CR13-147. Dr. Jones seconded the motion, which passed unanimously.

28. CR13-148

Ms. Clukey moved to investigate further CR13-148. Mr. Dyer seconded the motion, which passed unanimously.

29. CR13-149

Ms. Clukey moved to dismiss CR13-149. Dr. Dumont seconded the motion, which passed 7-0-0-2 with Dr. Andrews and Dr. Jones recused.

The patient complains that the physician is incompetent because he injured the patient's knee, and unprofessional because he informed other providers that the patient was a drug addict. The physician's response, and the medical records, indicate the patient had knee pathology long before seeing the physician for hip surgery, and the patient had an extended and complex history with licit and illicit drug use. The patient failed a urine drug screen at a pain center, which was recommended by the physician, after lying on his registration form about previous drug use. The physician made considerable efforts over time to help this patient.

30. CR13-157

Dr. Jones moved to dismiss CR13-157. Mr. Dyer seconded the motion, which passed 8-0-0-1 with Dr. Barnhart recused.

The patient was angry that he had to wait 80 minutes to be seen, angry that he was seeing a P.A., displeased that he was only given page two of the HIPAA form to sign, and upset that the exam room was unsanitary. He was also angry that the urologist whom he expected to see was on vacation at the time of his appointment.

The physician agrees that the wait time for the PA was unacceptable and apologizes, and notes that the office has specifically addressed this problem. The physician states that the referring PCP was notified that the appointment was with his physician assistant, and he believed that his office also told the patient when he was called to confirm the office appointment. The physician again apologizes if the patient was not notified when called. The patient was offered the first page of the HIPAA form by office staff when the omission was discovered at his appointment but he stated he did not need it.

The allegation of uncleanness is not supported by either the physician or an office visit by the Board Investigator.

31. CR13-158

Dr. Jones moved to dismiss CR13-158. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Barnhart recused.

This patient has many complaints against this specialty practice, the physician assistant, his supervising physician, and the office. The patient had to wait 80 minutes to see the P.A., he did not want to see a P.A., only a physician, he felt that the P.A. was not professional, he was angry about his perception of being lectured about once smoking, and he felt the exam room was dirty.

The physician assistant apologizes for the extended wait time. The primary supervising physician addresses this, and explains the steps taken to keep waiting times down to 15 minutes or less in the future. The appointment with the P.A. was made by the patient's own physician, but apparently the patient was not notified of this or did not remember he had been notified. The appointment with the P.A. was not a mistake made by the specialty practice. The Board investigator examined and photographed the exam room, and found no dirty or unsanitary conditions. The professional behavior of the P.A. in the exam room is impossible to assess as it was behind closed doors but the P.A. does state that he started the appointment with an apology for any confusion. The P.A. explains that because of this patient's clear frustration and displeasure with his visit, both of the physicians that he works with have sat down with him and reviewed all aspects of patient care in the office.

32. CR13-170

Dr. Andrews moved to investigate further CR13-170. Ms. Clukey seconded the motion, which passed 7-1-0-1 with Dr. Jones recused.

33. CR13-174

Dr. Barnhart moved to investigate further CR13-174. Dr. Jones seconded the motion, which passed unanimously.

34. CR13-182

Dr. Nyberg moved to investigate further CR13-182 and order a 3286 evaluation. Mr. Dyer seconded the motion, which passed unanimously.

35. CR13-117 Joel S. Olstein, M.D.

[SEE APPENDIX B ATTACHED]

Ms. Clukey moved to accept Dr. Olstein's offer to surrender his license voluntarily, while under investigation. Dr. Nyberg seconded the motion, which passed unanimously.

Dr. Jones moved not to issue a press release. Dr. Dumont seconded the motion, which passed 5-3-0-1 with Dr. Sacchetti recused.

III. Assessment and Direction

36. AD12-244 (CR13-201)

Dr. Nyberg moved to issue a complaint (CR13-201), combine with CR 13-182, order a 3286 evaluation, and investigate further. Mr. Dyer seconded the motion, which passed unanimously.

37. AD13-193 (CR13-202)

Dr. Jones moved to issue a complaint in the matter of AD13-193 (CR13-202). Dr. Dumont seconded the motion, which passed unanimously.

38. Intentionally left blank

39. Intentionally left blank

40. Complaint Status Report (FYI)

41. Consumer Assistant Feedback (None)

42. Physician Feedback (None)

IV. Informal Conference at 11:00 A.M.

A. CR 12-201 Arthur Blake, M.D.

Dr. Andrews moved to dismiss CR 12-201 Arthur Blake, M.D. with a letter of guidance. Dr. Jones seconded the motion, which passed unanimously.

A pharmacist notified the Board of inappropriate opioid prescribing. After review of several patient charts, the Board initiated a complaint against the physician's license due to poor medical documentation of pain management issues, lack of consistent universal precautions in opiate prescribing, and inappropriate methadone prescribing. The physician acknowledged his shortcomings and committed to making changes. He pursued training through CME courses and self-education. He applied this knowledge to his own patients, and he developed a monthly education program available to all chronic opiate recipients within his medical group. He likewise was instrumental in the development of a physician group in his community that provides pain related education and case review for colleagues. At the conclusion of the informal conference, the Board acknowledged the physician's exemplary personal changes and community involvement, both of which supported dismissal of the complaint with guidance as follows:

1. Opiate prescribing should be accompanied by a careful patient risk assessment and appropriate specialist consultation.

2. Medical documentation should include medical decision-making that justifies management changes.
3. All patients receiving prescriptions of controlled substances should be monitored with consistent application of universal precautions.

V. Adjudicatory Hearing(s) (None)

VI. Board Orders and Consent Agreement Monitoring and Approval

A. Board Orders

1. Alexandria E. Nesbit, P.A.-C. [SEE APPENDIX C ATTACHED]

Dr. Dumont moved to send the order back to the hearing officer for corrections and authorize Dr. Gleaton sign a corrected Board Order in the matter of Alexandria E. Nesbit, P.A.-C. Dr. Jones seconded the motion, which passed unanimously.

B. Consent Agreement Monitoring and Approval

1. Charles C. Smith, M.D. [SEE APPENDIX D ATTACHED]

Dr. Jones moved to approve a consent agreement in the matter of Charles C. Smith, M.D. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Sacchetti recused.

2. David N. Breer, M.D.

Dr. Dumont moved to approve Dr. Breer's request to terminate his consent agreement. Dr. Andrews seconded the motion, which passed 7-0-0-2 with Dr. Barnhart and Dr. Sacchetti recused.

3. John A. Boothby, M.D.

Dr. Boothby has submitted a request to be released from probation now rather than in February of 2014.

Dr. Jones moved to approve Dr. Boothby's request for early release from probation. Dr. Barnhart seconded the motion, which failed 2-5-0-2 with Dr. Andrews and Dr. Sacchetti recused.

4. Alexandria Nesbit, P.A. – C.

Ms. Nesbit has asked that the Board approve Dr. Oleg Reznik as a peer monitor.

Dr. Jones moved to approve Dr. Reznik as a peer monitor for Alexandria Nesbit, P.A. – C. Dr. Dumont seconded the motion, which passed 8-0-0-1 with Dr. Sacchetti recused.

5. Charles D. Clemetson, M.D.

Dr. Clemetson is requesting approval of Edward Pontius, M.D. as his monitor. Dr. Clemetson did not provide the name of the records management program he plans to take but promised to do so by the end of the meeting.

Dr. Jones moved to approve Edward Pontius, M.D. as his monitor and authorize the Board Chairman to review the proposed records course and either approve or deny the course. Dr. Andrews seconded the motion, which passed 8-0-0-1 with Dr. Sacchetti recused.

6. Alexandra M. Craig, M.D.

Dr. Craig is requesting approval of a proposed work plan at Penobscot Community Health care.

Dr. Dumont moved to approve Dr. Craig's proposed work plan at Penobscot Community Health care. Dr. Barnhart seconded the motion, which passed 8-0-0-1 with Dr. Sacchetti recused.

7. Thomas DeFanti, M.D.

Dr. DeFanti who has been in recovery for over fourteen years and has a clean track record for urine monitoring over that time is requesting the Board reconsider the need to maintain a relationship, which includes urine monitoring, with the MPHP.

Dr. Barnhart moved to amend Dr. DeFanti's consent agreement to terminate participation in the MPHP. Dr. Nyberg seconded the motion, which passed unanimously.

VII. Minutes of October 8, 2013

Ms. Clukey moved to approve the minutes of October 8, 2013. Mr. Dyer seconded the motion, which passed unanimously.

VIII. Remarks of Chairman

A. Discussion of PA Schedule II Authority

Dr. Jones moved to propose a change to the Chapter 2 Rules to make Schedule II prescribing authority the responsibility of the Primary Supervising Physician as part of the plan of supervision. Dr. Nyberg seconded the motion, which passed 8-0-0-1 with Dr. Sacchetti recused.

IX. Executive Director's Monthly Report

The Board accepted the report of the Executive Director.

A. Complaint Status Report (FYI)

B. Interstate Compact for Physician Licensure (FYI)

- X. Medical Director's Report (None)
- XI. Remarks of Assistant Attorney General

Mr. Smith reported he attended the FSMB Attorney Roundtable in Portland Oregon and provided the Board with a summary of the workshop.

XII Secretary's Report

A. List A

Dr. Jones moved to ratify approval of licensure for the following Physicians. Dr. Andrews seconded the motion, which passed unanimously.

1. M.D. List A Licenses for Ratification

The following license applications have been approved by staff and Board Secretary David D. Jones, M.D. without reservation:

NAME	SPECIALTY	LOCATION
Adepoju, Linda	General Surgery	York
Agnihotri, Adheesh	Internal Medicine	Biddeford
Al-Farra, Sherif T.	Internal Medicine	Portland
Anyichie, Nonyelu	OB/GYN	Not Listed
Berman, Kirsten A.	Internal Medicine	Portland
Binder, David A.	Emergency Medicine	Brunswick
Boutselis, Maximina A. D.	Radiology	Not Listed
Fontaine, Emily M.	Family Medicine	Ellsworth
Godfrey, Gerald C.	Surgery	Dover-Foxcroft
Gravdahl, Daniel J.	Pathology	Not Listed
Harmych, Brian M.	Otolaryngology	Bangor
Hayward, Geoffrey L.	Anesthesiology	Not Listed
Italia, Hirenkumar D.	Sports Medicine	Telemedicine
Karai, Laszlo J.	Pathology	Not Listed
Koett, Jamie L.	Family Medicine	Waterville
LeBlanc, Louis J.	Emergency Medicine	Not Listed
Muehlenbein, Stephen J.	Diagnostic Radiology	Not Listed
Musolino, Patricia L.	Neurology	York
Omar, Khawaja O.	Internal Medicine	Bangor
Orvald, Thomas O.	Surgery	Not Listed
Palma-Vargas, Juan M.	Surgery	Portland
Rourke, Loren L.	Surgery	Portland
Ruiz Jr., Gonzalo E.	family Medicine	Ellsworth
Tzogias, Leonidas	Internal Medicine	Bangor
Uysal, Askin	Internal Medicine	Bangor
Vaitkevicius, Henrikas	Psychiatry	York

Wotkowicz, Chad
Yountz, Marcus R.

Urology
Psychiatry

York
Telemedicine

2. P.A. List A Licenses for Ratification

Dr. Jones moved to ratify approval of licensure for the following Physician Assistants.
Dr. Andrews seconded the motion, which passed unanimously.

The following Physician Assistant license applications have been approved by Board Secretary, David Jones, M.D. without reservation:

<u>NAME</u>	<u>LICENSE</u>	<u>PSP</u>	<u>LOCATION</u>
Michelle Dawczyk, P.A.-C	Inactive	None	None
Beth Hart, P.A.-C	Inactive	None	None
Elizabeth Pritchard, P.A.-C	Inactive	None	None
Annie Rice, P.A.-C	Active	Shulamith Bonham, M.D.	Portland
Anne Richardson, P.A.-C	Active	None	None
Eva Williams, P.A.-C	Active	Robert Clough, M.D.	Bangor
Zorica Bajic, P.A.-C	Active	Catherine Share, M.D.	Biddeford
Lisa Bergmark, P.A.-C	Active	Nancy O'Neill, M.D.	Brewer

B. List B Applications for Individual Consideration (None)

C. List C Applications for Reinstatement

1. List C Applications for Reinstatement (None)

2. List C Applications for Reinstatement for Individual Consideration

a. Paul J. Davis, M.D.

The Licensure committee moved to approve leave to withdraw the license reinstatement application for Paul J. Davis, M.D. The motion passed unanimously.

D. List D Withdrawals

1. List D (1) Withdraw License Application

a. Brian D. Smullen, M.D.

The Licensure Committee moved to approve Dr. Smullen's request to withdraw his license from registration. The motion passed by unanimous vote.

b. Ferdinando S. Buonanno, M.D.

The Licensure Committee moved to approve Dr. Buonanno's request to withdraw his license from registration. The motion passed by unanimous vote.

2. List D (2) Withdraw License from Registration

Dr. Jones moved to approve the licensees on List D (2) to withdraw their licenses from registration. Dr. Dumont seconded the motion, which passed unanimously.

The following physicians have applied to withdraw their licenses from registration.

<u>NAME</u>	<u>LICENSE NUMBER</u>
Bagneris, Gina	MD18396
Dobbs, Sarah	MD14818
Joyce, Ryan	MD19311
Korat, Orly	MD12329
Kugel, Jeffrey	MD13586
Loewinger, Michael	MD19154
Oldham, Sheridan	MD10689
Reece, Richard	MD8465
Weigle, Tom	MD9661
Wernicke, Alexander	MD16411

3. List D (3) Withdraw License from Registration - Individual Consideration (None)

E. List E Licenses to lapse by operation of law

The following physicians' licenses lapsed by operation of law effective October 17, 2013.

<u>NAME</u>	<u>LICENSE NUMBER</u>
Carey, Rebecca	MD17368
Dimkpa, Okechukwu	MD18362
Eragan, Mehmet	MD6262
Fischer, Stephen	MD17728
Greenburg, Marian	MD14884
Kennedy Jr., William	MD8928
Killoran, Paul	MD6156
MacLaughlin Jr., Winthrop	MD8918
McClain, Joseph	MD17212
Memon, Abdul Sattar	MD16988
Newton, Norris	MD18851
Ogburn, Benjamin	MD14220
Oldenburg, Frederick	MD9401
O'Neill, Karen	MD12841
Prasad, Nisheet	MD18274
Reddy, Vivek	MD17565
Schoeller, Margaret	MD13302

Shapiro, Deborah	MD18624
Siewers, Ralph	MD11866
Teame, Akeza	MD18930
Tefo, Richard	MD17702
White, William	MD18909

F. List F Licensees requesting to convert to active status (None)

G. List G Renewal applications for review

1. Christopher Jones, M.D.

The Licensure Committee moved to renew under a consent agreement with instructions given to the Assistant Attorney General. The motion passed 8-0-0-1 with Dr. Sachetti recused.

H. List H. Physician Assistant Schedule II Authority Requests for Ratification

1. Applications to Renew Schedule II Authority (None)

2. Applications for New Schedule II Authority

Dr. Jones moved to ratify the approval of the requests for Schedule II Prescribing Authority. Dr. Nyberg seconded the motion, which passed unanimously.

The following new requests for Schedule II prescribing authority have been approved by the Board Secretary David Jones, M.D.

NAME	PSP	LOCATION
Taylor Butterfield, P.A.-C	Burton Knapp, M.D.	Rangeley
Dennis Chinoy, P.A.-C	A. Merrill Garrett, M.D.	Brewer
Diana Drown, P.A.-C	Michael Parker, M.D.	Lewiston
Ocean Dunton, P.A.-C	Matthew Bush, M.D.	Auburn
David Johnson, P.A.-C	Nilesh K. Patil, M.D.	Millinocket
Angela Michalka, P.A.-C	Stephen Thompson, M.D.	Bangor
Heather Renihan, P.A.-C	Paul Mailhot, M.D.	Lewiston
Kathy Bouton-Semmel, P.A.-C	William Wood, Jr., M.D.	Bangor
Craig Hardy, P.A.-C	David Koffman, M.D.	Bangor
Stephanie Graves, P.A.-C	Andres Fleury-Guzman, M.D.	Caribou
Brad Schmeling, P.A.-C	Michael Sullivan, M.D.	Fort Kent
Anne Richardson, P.A.-C	Anand Rughani, M.D.	Scarborough

XIII. Standing Committee Reports

A. Administration, Policy, and Rules Committee

1. Proposed Amendment Notification 24 MRS §2505 Reporters

Ms. Clukey moved to approve the proposed amendments to the Notification 24 MRS §2505 Reporters Policy. Dr. Andrews seconded the motion, which passed unanimously.

2. Policy Amendment – NPDB Queries Policy

Dr. Nyberg moved to approve the proposed amendments to NPDB Queries Policy. Dr. Jones

3. Policy Review – Travel Expenses Reimbursement

Dr. Dumont moved to reaffirm the Travel Expenses Reimbursement policy. Dr. Jones seconded the motion, which passed unanimously.

4. Advisory Ruling Update - Assistants (Unlicensed) Scope of Practice

Dr. Dumont moved to approve amendments to the Assistants (Unlicensed) Scope of Practice Advisory Ruling. Dr. Jones seconded the motion, which passed unanimously.

6. Proposed Repeal and Replace Chapter 4 Rules (FYI)

7. Personnel Issue

Dr. Andrews moved to ratify his action regarding a personnel issue. Dr. Jones seconded the motion, which passed unanimously.

B. Licensure Committee and CME

1. Licensing Pilot Program

The licensing pilot program recognizes the work other states perform during licensure and creates a process where applicants licensed in participating states can receive a permanent license in one to two business days. The applicants must complete an application, attest they meet all the Maine requirements, and successfully pass the Maine written exam. In lieu of immediately obtaining references the participating states will be contacted and asked for any historical and/or current disciplinary/investigatory history. If the applicant has a clean license history the Maine license would be immediately granted. The applicant must also complete an FCVS application. While the FCVS is processing, references will be verified. Once the FCVS packet is received the licensing specialist will confirm the information attested to by the applicant.

Dr. Jones moved to initiate the Licensing Pilot Program as described above. Mr. Dyer seconded the motion, which passed unanimously.

C. Public Information Committee (FYI)

XIV. Board Correspondence (FYI)

XV. FYI

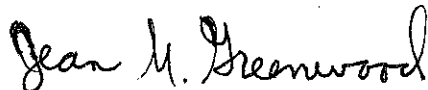
XVI. FSMB Material (FYI)

XVII. Other Business (None)

XVIII. Adjournment 4:48 p.m.

Dr. Barnhart moved to adjourn the meeting. Ms. Clukey seconded the motion, which passed unanimously.

Respectfully submitted,

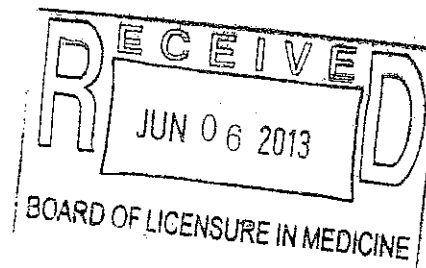
A handwritten signature in cursive script that reads "Jean M. Greenwood".

Jean M. Greenwood
Administrative Assistant

State of Maine
Board of licensure in medicine
137 State House Station
Augusta, Maine 04333-0137

APPENDIX A

June 4, 2013



I am relinquishing my license to practice medicine in the state of Maine
(Maine license No. MD16655) as of the date this is received. All communications
should be through the addresses below.

October 18, 2013

Maine Board of Licensure in Medicine
137 State House Station
Augusta, ME 04333-0137

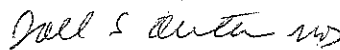
Re: *Surrender of Maine Medical License While Under Investigation (Complaint No. CR13-117)*

Dear Members of the Board of Licensure in Medicine:

I understand that on September 10, 2013, the Board reviewed Complaint No. CR13-117, which concerns an open complaint against my Maine medical license regarding allegations of unprofessional conduct.

In lieu of further proceedings regarding Complaint CR13-117, I hereby tender the surrender of my Maine medical license to the Board while under investigation. I fully understand and agree that if the Board accepts the surrender of my Maine medical license while under investigation, that it will result in a report from the Board to the National Practitioner Data Bank (NPDB) and the Federation of State Medical Boards (FSMB) that I surrendered my medical license while under investigation of an open complaint regarding unprofessional conduct. I further understand and agree that the Board may consider the facts underlying Complaint CR13-117 in the event that I ever re-apply for licensure in the State of Maine, and that the Board may provide a copy of the complaint and investigative materials to any other medical or professional licensing board to which I may submit an application for licensure.

Sincerely,



Joel S. Olstein, M.D.

STATE OF MAINE BOARD OF LICENSURE IN MEDICINE

In Re: Alexandria E. Nesbit, P.A.-C.

Complaint No. 13-173

DECISION AND ORDER**I. PROCEDURAL HISTORY**

Pursuant to the authority found in 32 M.R.S. §§ 3269 and 3282-A and 10 M.R.S. § 8003(5), the State of Maine Board of Licensure in Medicine ("Board") met in public session at its offices in Augusta, Maine, on October 8, 2013. The purpose of the meeting was to conduct an adjudicatory hearing to determine whether grounds existed to impose discipline on licensee Alexandria E. Nesbit, P.A.-C.

A quorum of the Board was in attendance during all stages of the proceedings. Participating and voting Board members were David Andrews, M.D., Louisa Barnhart, M.D., Cheryl Clukey, Public Member, David Dumont, M.D., Dana Dyer, Public Member, David Jones, M.D., David Nyberg, Ph.D., and Chair Maroulla S. Gleaton, M.D. Ms. Nesbit was present and represented herself. Dennis Smith, Esq., Assistant Attorney General, represented the State of Maine. Rebekah J. Smith, Esq., served as Hearing Officer. The hearing was held in accordance with the requirements of the Administrative Procedures Act, 5 M.R.S. § 9051 et seq.

Joint Exhibits #1 to #19 were admitted without objection. The Board took notice of its statutes and rules and confirmed that no participating member had any conflict of interest or bias that would prevent him or her from rendering an impartial decision in this matter. Each party presented an opening statement. The State presented the Licensee as a witness. The Licensee presented Jaime Spofford, a co-worker of the Licensee, and, via teleconference, Dr. Craig Curtis,

her supervising physician, as witnesses. Each party made a closing statement. The Board then deliberated and made the following findings of fact and conclusions of law by a preponderance of the credible evidence regarding the allegations against Ms. Nesbit.

II. FINDINGS OF FACTS

1. The Licensee has held a license to practice as a physician assistant since September 9, 2005. (Joint Exhibit #16.)
2. On July 12, 2011, the Licensee entered into a Consent Agreement with the Board regarding Complaint 10-254, alleging that the Licensee had relapsed to the use of alcohol. (Joint Exhibit #15.) The Consent Agreement required that the Licensee refrain from the use of any and all prohibited substances except those dispensed by a single primary care physician, undergo substance monitoring, undertake substance abuse and mental health treatment, be monitored by a Board-approved physician, attend self-help group meetings, and participate in a contract with the Medical Professionals Health Program ("MPHP"). (Joint Exhibit #15.) The Consent Agreement also stated that any violation of the terms therein would result in the immediate, indefinite, automatic suspension of the Licensee's license. (Joint Exhibit #15.)
3. The Consent Agreement was modified on October 28, 2011, to approve a physician assistant to be the Licensee's primary care provider rather than a physician. (Joint Exhibit #14.) The Consent Agreement was again modified on October 23, 2012, to reduce the frequency of substance monitoring. (Joint Exhibit #13.)
4. Between July 2011 and October 2012, the Licensee had four test results that showed abnormally low levels of creatinine. (Joint Exhibit #10; Joint Exhibit #11; Joint Exhibit #12.) Follow-up tests were not ordered immediately after the four abnormal test results.

(Joint Exhibit #10; Joint Exhibit #11; Joint Exhibit #12.) On March 18, 2013, the Licensee had an additional test result that showed an abnormally low level of creatinine. (Joint Exhibit #12.) On August 6, 2013, the Licensee returned another urine test with low creatinine levels, which Dr. Margaret Palmer of MPHP characterized as having a dilute status. (Joint Exhibit #9.) On August 26, 2013, at the request of Dr. Palmer, the Licensee took a PEth test for Phosphatidyl Ethanol, which tested back 2 to 3 weeks and returned positive. (Joint Exhibit #9.) Dr. Palmer reported that the Licensee did not deny that she had had alcohol with dinner. (Joint Exhibit #9.) Dr. Palmer reported that she was in the process of revising the Licensee's monitoring contract regarding the frequency of substance testing, therapy, and attendance at Alcoholics Anonymous. (Joint Exhibit #9.)

5. Pursuant to the new five-year monitoring contract between the licensee and MPHP, dated September 5, 2013, the Licensee agreed to abstain from any and all potentially addictive or psychoactive chemicals; refrain from using alcohol in any form; meet with her MPHP case manager yearly; submit monthly self-assessment reports; attend self-help group meetings and submit monthly meeting attendance logs; enroll in the drug and alcohol screening program administered through the MPHP-approved laboratory; submit to urine testing four times a month for the first year, three times a month for the second year, and two times a month for the third year as well as blood testing once per quarter; notify MPHP immediately of any diagnosis or treatment changes in addition to the regularly scheduled monitoring reports of treatment service providers; and notify all treatment providers of her addiction and/or mental illness. (Joint Exhibit #7.)
6. On September 6, 2013, Board staff member Timothy Terranova reported in a memo to the Board that Dr. Palmer had indicated that the Licensee had admitted to having wine with

dinner on occasion. (Joint Exhibit #8.) Also on September 6, 2013, Mr. Terranova informed the Licensee that her license was being automatically suspended due to her violation of the Consent Agreement. (Joint Exhibit #8.)

7. By letter dated September 6, 2013, the Licensee informed the Board that her August 26 positive Phosphatidyl Ethanol test resulted from drinking alcohol with friends on the weekend of August 10 and 11. (Joint Exhibit #6.) She indicated she had not had a drink of alcohol since then and would not do so in the future. (Joint Exhibit #6.) She reported the steps she was taking to ensure that she would not take a drink of alcohol again such as: increasing her attendance at AA meetings to daily, avoiding the particular friends she had drunk wine with, and rereading all of her notes and documents from her six-week stay at Lakewood Rehabilitation Center in 2010. (Joint Exhibit #6.) She reported shame and regret about her actions and how they had impacted her colleagues and noted that she had signed a new contract with MPHP. (Joint Exhibit #6.)
8. On September 9, 2013, the Board notified the Licensee via first class and certified mail that her license had been suspended due to her violation of the Consent Agreement based upon the August 26, 2013, PEth test, which was positive for Phosphatidyl Ethanol, a marker for alcohol use. (Joint Exhibit #5.)
9. By letter dated September 12, 2013, the Board notified the Licensee that on September 10, 2013, the Board had reviewed the information regarding her violation of the Consent Agreement and voted to issue a complaint against her regarding her use of alcohol. (Joint Exhibit #4.)
10. By letter dated September 18, 2013, the Licensee responded to the complaint. (Joint Exhibit #3.) She agreed that her positive test result was a breach of the Consent Agreement

she had entered into with the Board. (Joint Exhibit #3.) She again expressed remorse, shame, and regret for her actions. (Joint Exhibit #3.) The Licensee expressed hope that the Board would give her another chance to avoid a relapse. (Joint Exhibit #3.) She indicated that she had learned a lot from the relapse and reiterated the steps she was taking to prevent another relapse. (Joint Exhibit #3.) She noted that she had not been able to work since September 6 due to her license suspension. (Joint Exhibit #3.) She reported that she was working on a return to work plan with Dr. Palmer and posited that she did not pose a hazard to her patients because she had never consumed alcohol before or during work hours. (Joint Exhibit #3.)

11. By letter dated September 19, 2013, the Licensee's supervising physician, Craig Curtis, MD-FAAFP, MRO, indicated that he had been the Licensee's supervising physician for several years in a previous practice and was currently her supervisor in his role as the Medical Director of St. Joseph Hospital Workwell Occupational Medicine Services. (Joint Exhibit #2.) Dr. Curtis indicated that the Licensee's professional and clinical performance under his supervision had been excellent and he had had no questions of impaired performance, absenteeism, lack of professional behavior, inadequacies of record keeping, timeliness of record keeping, or problems with interpersonal interactions. (Joint Exhibit #2.) Dr. Curtis reported that a 100% review of all of the Licensee's charts found her to be clinically talented and responsible regarding her patient care activities. (Joint Exhibit #2.) He reported no concerns about her ability to provide the highest quality of medical care to her patients and noted that he received no complaints from patients, employers, or other personnel involved with delivery of care by the Licensee. (Joint Exhibit #2.) Dr. Curtis indicated that he was very interested in preserving the Licensee's employment as a

physician assistant under his supervision with a structure that had been put in place for her to be able to perform her medical care delivery services while complying with her Consent Agreement. (Joint Exhibit #2.) Dr. Curtis concluded that it was his professional opinion in observing and supervising the Licensee's medical performance over the past several years that the Licensee's alcoholism had not impacted her performance of day-to-day patient care delivery services in any way, either by his observation or by those of her colleagues, co-workers, or patients. (Joint Exhibit #2.) Dr. Curtis noted that he was committed to continuing to supervise the Licensee, provide oversight for her to comply with any Board requirements, and document and report to the Board any issues that arose regarding her ability to provide the highest quality of patient care. (Joint Exhibit #2.)

12. By letter dated September 12, 2013, sent first class and certified mail, the Licensee was notified that a hearing regarding the automatic suspension of her license would be held on October 8, 2013. (Joint Exhibit #1.) The Notice of Hearing indicated that the Board would consider whether she had failed to comply with the condition of probation in the Consent Agreement dated July 12, 2011, by consuming alcohol, which was grounds for discipline pursuant to 10 M.R.S. § 8003(5)(A-1)(4).¹ (Joint Exhibit #1.)
13. At hearing, the Licensee explained that she had worked for the prior year and a half treating 10 to 12 patients a day at Jackson Lab in Bar Harbor, an occupational medicine satellite clinic of St. Joseph Workwell Occupational Medicine Services in Bangor. (Testimony of Licensee.) The Licensee reported that she had weekly telephone contact with Dr. Curtis as

¹ The Notice of Hearing also indicated that the Board would be considering whether the Licensee had engaged in habitual substance abuse that had resulted in or was foreseeably likely to result in her performing services in a manner that endangered the health or safety of patients in violation of 32 M.R.S. § 3282-A(2)(B) and whether she had engaged in unprofessional conduct in violation of 32 M.R.S. § 3282-A(2)(F) by violating a standard of professional behavior, including engaging in disruptive behavior, that has been established in the practice for which she was licensed. (Joint Exhibit #1.) At hearing, the State declined to proceed on these two grounds.

her supervising physician and that he was in attendance at her worksite a couple of times per month. (Testimony of Licensee.) She reported that she had daily contact with her monitors under the Consent Agreement, Dr. Lee Haines and Ms. Merrill Nath, medical care providers who shared the St. Joseph's family medicine practice at Jackson Lab. (Testimony of Licensee.) The Licensee testified that although Ms. Nath and Dr. Haynes were in a separate building on the Jackson Lab campus, she went to talk to them each day and sometimes called them on the phone to discuss certain shared patients. (Testimony of Licensee.) The Licensee also explained that she had daily contact with her backup monitor, Jaime Spofford. (Testimony of Licensee.)

14. At the hearing, the Licensee took full responsibility for her actions, she acknowledged that she had consumed alcohol on three or four occasions with dinner, and she expressed regret, remorse, shame at the impact her actions had had on her family and coworkers. (Testimony of Licensee.) The Licensee testified that her relapse had strengthened her resolve toward sobriety and she understood that she could not relapse again. (Testimony of Licensee.) She indicated that she was taking concrete steps to ensure this, including a new contract with MPHP, increased attendance at AA, and submission to weekly random urine screening and quarterly blood screenings. (Testimony of Licensee.) The Licensee reported that she had begun seeing her therapist weekly although only monthly visits were expected by MPHP, had spoken with her psychiatrist regarding ways to prevent relapse, and had been speaking more frequently with her AA sponsor. (Testimony of Licensee.)
15. The Licensee could not explain the low levels of creatinine on several of her urine tests. (Testimony of Licensee.) She reported that Dr. Palmer of MPHP had asked her to taper off Clonazepam, prescribed by her psychiatrist for anxiety, over the next three months.

(Testimony of Licensee.) The Licensee testified that she had been on the same dosage of Clonazepam, 1 mg three times a day, for a couple of years. (Testimony of Licensee.) She noted that in the past when she had stopped taking the medication she began to have problems with alcohol. (Testimony of Licensee.)

16. Also at hearing, Jaime Spofford, coworker and peer monitor of the Licensee, testified that she had been working with the Licensee for approximately a year and a half and that they enjoyed a very close professional relationship, working together daily on patient care and the inner workings of their office. (Testimony of Spofford.) Ms. Spofford reported that she had never noticed Licensee display any odd behavior or inappropriate cognition, that the Licensee came to work every day well-prepared, that the Licensee was a highly regarded resource regarding patient care, that she had been in the treatment room several times with the Licensee when they were collaboratively treating patients, and that the Licensee was very professional with patients and skilled at conveying treatment needs. (Testimony of Spofford.)
17. Dr. Curtis testified at hearing that he had been supervising the Licensee for 8 to 10 years across two settings. (Testimony of Curtis.) Dr. Curtis reiterated that he had reviewed almost all the Licensee's patient's records over those years and had observed her day-to-day activities in the office and found no observation of impaired cognition, issues with patients, or inappropriate behavior with colleagues. (Testimony of Curtis.) Dr. Curtis reiterated that in order for the Licensee to continue in her position she would need to have her license restored, noting that she had been a highly sought candidate when originally hired. (Testimony of Curtis.)

III. GOVERNING STATUTES AND RULES

1. The Board may impose conditions of probation upon a licensee to run for such time period as the Board determines appropriate. Failure to comply with the conditions of probation is a ground for disciplinary action against a licensee. 10 M.R.S. § 8003(5)(A-1)(4).
2. For each violation of applicable laws, rules or conditions of licensure, the Board may issue warnings, censures or reprimand; suspend a license for up to 90 days for each violation of applicable laws, rules, and conditions of licensure; revoke a license; impose a civil penalty of up to \$1500 for each violation of applicable laws, rules and conditions of licensure; or impose conditions of probation upon a licensee. 10 M.R.S. § 8003(5)(A-1).
3. The Board may impose on a licensee the actual expenses incurred for the investigation and prosecution of a matter. 10 M.R.S. § 8003-D.

IV. CONCLUSIONS OF LAW

The Board, considering the above facts and those alluded to in the record but not referred to herein, determined that it had jurisdiction over Alexandria Nesbit and concluded by unanimous vote that Ms. Nesbit failed to comply with the conditions of probation required by her Consent Agreement dated July 12, 2011, and its subsequent amendments, by consuming alcohol, in violation of 10 M.R.S. § 8003(5)(A-1)(4). The Board also approved the following sanctions by unanimous vote:

1. Ms. Nesbit will undergo a period of probation of five years under the following conditions:
 - a. Personal Use of Prescription Medication. Ms. Nesbit must completely abstain from the use of any and all Prohibited Substances except drugs that are dispensed or prescribed by a single primary care physician/medical provider or drugs that are dispensed or prescribed under circumstances that constitute a genuine medical or

surgical emergency. "Prohibited Substances" as used throughout this Consent Agreement shall mean: benzodiazepines; sedatives; hypnotics or similar drugs; opioids; alcohol; and mood, consciousness or mind-altering substances, whether illicit or not.

- i. If any controlled drug is dispensed or prescribed for Ms. Nesbit for a personal medical condition, Ms. Nesbit or the Supervising Physician shall notify the Board by telephone and in writing within 48 hours or as soon thereafter as possible. This notice shall be followed by a written summary of all pertinent circumstances. In the event that Ms. Nesbit's primary care physician/medical care provider prescribes a medication for her that is to be taken on an ongoing basis, Ms. Nesbit shall submit a monthly written report to the Board that appraises the Board of the circumstances regarding the use of the prescribed medication.
 - ii. Any reliable evidence of Ms. Nesbit's use at any time in the future, whether in Maine or elsewhere, of any Prohibited Substance, including but not limited to benzodiazepines, sedatives, hypnotics, opioids, or alcohol, shall constitute a violation of this Decision and Order, which shall result in the immediate, indefinite automatic suspension of licensure, and proof of use may result in permanent revocation of licensure.
- b. Single Primary Care Physician/Medical Provider to Prescribe Medications.
- i. With the sole exception of medications permitted by the Board to be prescribed to her by her Board-approved treating psychiatrist, Ms. Nesbit shall only obtain her prescription medication(s) from the single primary care

physician/medical provider approved by the Board. Ms. Nesbit may not make any unilateral changes to the medication regimen prescribed for her by her Board-approved primary care physician/medical provider. Any and all prescriptions for medications that are prescribed to her by her Board-approved primary care physician/medical provider or psychiatrist shall be filled by her at CV Caremark, a mail order pharmacy. Ms. Nesbit shall notify the Board within 48 hours if she switches to a new pharmacy.

- ii. Single Primary Care Physician/Medical Provider. Ms. Nesbit shall continue to obtain primary care treatment from the Board-approved primary care physician/medical provider who shall prescribe all necessary medications for Ms. Nesbit, and who shall coordinate Ms. Nesbit's treatment and pharmacological therapy with the Board-approved substance abuse and psychological providers. Such physician shall be knowledgeable about Ms. Nesbit's medical history, including her substance abuse history.

c. Substance Monitoring.

- i. Ms. Nesbit will comply with all terms of the contract entered into with MPHP on September 5, 2013, for a period of five years, including the substance monitoring protocol. Pursuant to the contract with MPHP, the substance abuse monitoring protocol shall be: urine testing four times a month for the first year, three times a month for the second year, two times a month for the third year, and at a frequency recommended by MPHP for the

remainder of the contract; blood testing quarterly; and hair or nail testing at any time requested by MPHP.

- ii. Ms. Nesbit shall undergo additional substance abuse testing within 24 hours of any abnormal test results with such testing to be overseen by MPHP.
- iii. Ms. Nesbit must ensure that all test results are reported promptly to the Board.
- iv. Ms. Nesbit must report to the Board any test result evidencing any level of a Prohibited Substance, whether by urine or other sample, by telephone and in writing within 24 hours or as soon thereafter as possible.
- v. Notwithstanding any other provision of this Decision and Order, the Board, the Supervising Physician, or the Board's agent may request Ms. Nesbit to submit to testing at any time. Failure to maintain this schedule or the random nature of the tests shall be cause for suspension, non-renewal, or revocation of Ms. Nesbit's Maine physician assistant license, unless proof of genuine emergent medical circumstances (for Ms. Nesbit or a patient) exist which warrant less serious disciplinary actions being taken by the Board.

d. Reporting Test Results.

- i. Written reports of all tests shall be sent to the Board monthly, together with an explanation of the dates and times samples were provided and tests made, the type(s) of tests made, and the substances tested for (together with detectable levels tested for), and the test results. Ms. Nesbit shall ensure that all reports are made to the Board in a timely fashion.

- ii. If any test is positive (i.e., in any manner evidences any use of any Prohibited Substance - including a positive result for the presence of ethyl glucuronide, a metabolite of alcohol), then the result shall be the immediate, indefinite, automatic suspension of Ms. Nesbit's physician assistant license which shall continue until the Board holds a hearing on the matter, unless the Board, or the Board Secretary and the Department of Attorney General, earlier determine that the report is without merit. The suspension shall become effective at the time that Ms. Nesbit receives actual notice from the Board that a report of violation(s) has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means.
 - iii. After receiving a positive report evidencing use by the Licensee of any Prohibited Substance, the Board shall investigate the situation, including demanding a response from Ms. Nesbit. The Board will hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both Ms. Nesbit and the Board agree to hold the hearing later) and it shall be held pursuant to the Maine Administrative Procedures Act.
- e. Failure to Maintain Sampling Schedule or Failure to Appear or to Provide Sample.
- i. Failure by Ms. Nesbit to maintain the sampling schedule; to appear when demanded to provide a sample; or to provide samples upon being demanded to do so shall be dealt with as follows:

- a. Reporting: If Ms. Nesbit fails to appear to provide a sample, fails to maintain the sampling/testing schedule, or fails to provide a urine sample, then the Supervising Physician and Ms. Nesbit must telephone the Board as soon as possible and send to the Board a written report of such failure within 48 hours.
- b. Second Opportunity to Provide Sample: If Ms. Nesbit appears when scheduled or ordered, but fails to provide an adequate sample, then with regard to urine, after accurate notation of any and all substances consumed (no substance shall be consumed which might affect the accuracy of the tests to be performed), a second opportunity to provide a urine sample shall be given after a reasonable time. A repeat failure or any refusal shall result in an immediate, indefinite suspension of licensure. The suspension shall begin the moment of the occurrence.
- c. Suspension: An immediate, indefinite suspension of licensure shall result from any failure by Ms. Nesbit to comply with the mandated schedule of samples, failing to appear to provide a sample, or failing to provide a urine sample after given a second opportunity. The suspension shall begin the moment Ms. Nesbit actually learns a report has been made or sent to the Board.
- d. Meeting with Board: Both Ms. Nesbit and the Supervising Physician shall, at the discretion of the Board, be required to appear before the Board regarding this situation at its next

regularly scheduled Board meeting, unless the next meeting is to be held within 15 days of the suspension, in which case they may be scheduled to appear at the subsequent regularly scheduled Board meeting.

- e. Board Action: The Board may order Ms. Nesbit's Maine physician assistant license reinstated or, if appropriate, may continue the suspension and may set the matter for hearing. The Board shall attempt to hold a hearing within 60 days of the automatic suspension, or as soon thereafter as practicable, at which time it may take such action as it deems appropriate, including without limitation, reinstatement, fines, probation, suspension, non-renewal and revocation.

f. Professional Management.

- i. Psychiatric Treatment. Within one month, Ms. Nesbit must submit the name of a psychiatrist for approval by the Board. Ms. Nesbit will obtain psychiatric treatment from the Board-approved psychiatrist pursuant to a plan of treatment. The Board-approved psychiatrist should specifically evaluate the Licensee's need for continued prescription of Clonazepam. The Board-approved psychiatrist shall report to the Board within three months as to the plan of treatment for the Licensee, which will be subject to the Board's approval.
- ii. Mental Health Treatment. Ms. Nesbit shall continue to obtain treatment from the previously Board-approved licensed individual or

agency in the treatment of mental health issues for the purpose of working on all issues pertaining to her mental health issues. The Board in its discretion may approve the same individual approved by the Board to provide Ms. Nesbit with substance abuse treatment to provide her with mental health treatment pursuant to this paragraph. The therapy sessions shall occur weekly or at such intervals as recommended by the treatment provider and continue until the therapist notifies the Board that treatment is no longer necessary or useful.

- iii. Prior Evaluation and Treatment Records. Ms. Nesbit shall execute all releases necessary to permit the transmission and disclosure of all records from previous treatment providers to the Board-approved primary care physician/medical provider and Board-approved treatment provider(s).
- iv. Communication of Treatment Providers. All treatment providers involved in Ms. Nesbit's care shall have full communication allowed among themselves, any prior treatment providers and, when requested, with the Board or its agent(s).

g. Change of Primary Care Physician or Treatment Providers.

- i. Change of Provider. If Ms. Nesbit desires to change her primary care physician/medical provider or treatment provider(s), then she shall make written application to the Board, including among other things a letter regarding her reasons for requesting such change(s) and separate letters from the current primary care physician/medical provider or treatment provider(s) and the proposed new primary care

physician/medical provider or treatment provider(s) relative to their understanding of the reasons for this request and, to the extent applicable, any concerns they may have. If the request is denied, Ms. Nesbit should propose another primary care physician or treatment provider for approval.

- ii. Reports from Treatment Providers. Ms. Nesbit shall ensure that on or before September 9th, December 9th, March 9th and June 9th of each year for the duration of Ms. Nesbit's period of probation, the Board-approved treatment providers submit to the Board a written report regarding: Ms. Nesbit's compliance with her schedule of meetings; Ms. Nesbit's ability to continue practicing medicine; and the prognosis of Ms. Nesbit's continued recovery. In addition, the treatment providers shall immediately notify the Board in writing whenever: (1) in his/her professional judgment, Ms. Nesbit poses a potential danger to the health, safety and welfare of patients; or (2) Ms. Nesbit terminates treatment or is non-compliant with the treatment plan.
- iii. Board Investigation. At any time the Board may deem appropriate, the Board or its agent may contact Ms. Nesbit and/or the Board-approved treatment providers to obtain further information relative to Ms. Nesbit. In addition, if the Board deems it appropriate, it may directly contact the treatment providers regarding any issues concerning Ms. Nesbit's treatment. In complying with this requirement, Ms. Nesbit waives any privileges concerning such information, reports, records and disclosures to

the Board. Ms. Nesbit shall execute any and all releases necessary to enable the Board and/or the Attorney General to communicate directly with her treatment provider(s) and to obtain copies of any and all notes, records, and documentation concerning his treatment.

h. Professional Oversight.

- i. Clinical Setting Inspections. Ms. Nesbit shall provide the Board with all locations where she practices. In addition, Ms. Nesbit shall permit the Board or its agents to conduct announced and/or unannounced inspections of all locations where she practices. Ms. Nesbit shall reimburse the Board for any actual costs incurred as a result of any inspection performed pursuant to this section.
- ii. Physician Monitor. Ms. Nesbit must have a Board-approved physician monitor who shall monitor her and a temporary monitor, who does not have to be a physician, if the monitor physician is unavailable. The physician monitor or the temporary monitor must be in direct physical contact with Ms. Nesbit and observe her within her medical practice at least four days each week during a five-day work week, and shall inform the Board if Ms. Nesbit demonstrates any issues with regard to isolation, inappropriate boundaries or decision-making, ability to concentrate, absenteeism, drug abuse, incompetence, unprofessionalism or any other concerns. If a report to the Board is required, the physician monitor or the temporary monitor shall report such information to the Board by telephone and in writing within 24 hours or as soon thereafter as possible. In the event that the physician monitor is on vacation or will not

otherwise be at the practice four days during a five-day work week, Ms. Nesbit will provide advanced written notice to the Board and the MPHP regarding the dates on which the physician monitor will be on vacation or otherwise away. The physician monitor and/or temporary monitor will be agents of the Board pursuant to Title 24 M.R.S. § 2511. Ms. Nesbit shall permit the physician monitor and/or temporary monitor full access to her medical practice, including but not limited to all patient information. The Board-approved physician monitor shall provide the Board with reports regarding Ms. Nesbit's medical practice on or before September 9th, December 9th, March 9th, and June 9th of each year during the period of Ms. Nesbit's probation.

i. Self-Help Group Meetings.

- i. Attendance at AA and NA. Ms. Nesbit must attend Alcoholics Anonymous ("AA") and/or Narcotic Anonymous ("NA") or another non-faith-based self-help group meeting approved by the Board a minimum of twice per week.
- ii. Impaired Physicians Self-Help Group. Ms. Nesbit shall attend self-help group meetings of an impaired medical professional group (i.e., Caduceus) on a regular basis. Meetings of the impaired professional self-help groups may be substituted on a one-for-one basis with meetings of AA or NA.
- iii. Reports of Attendance. Ms. Nesbit shall submit a signed, written quarterly report of her attendance at AA, NA or impaired professional

self-help group meetings to the Board on or before September 9th, December 9th, March 9th and June 9th of each year. Any instances of failure to attend the required numbers of meetings shall be noted, together with specific explanation detailing reasons.

- iv. Failure to Meet This Requirement. Reasonable explanations may exist for occasionally missing a meeting; however, unexcused continuous or repeated failures to comply with the requirements of this section shall constitute a violation of the Decision and Order which, after hearing before the Board, can result in licensure discipline, including without limitation a fine, suspension, non-renewal, or revocation of Ms. Nesbit's Maine physician assistant license.

- j. Maintenance of Obligations When Away.

- i. General. Ms. Nesbit is required to maintain her obligations under this Decision and Order regarding substance monitoring and self-help group meetings at all times, including times when she is away from home but within the continental limits of the United States. Ms. Nesbit will notify the Director of MPHP sufficiently in advance of travel to make whatever arrangements the Director deems appropriate for monitoring before she leaves. It shall be Ms. Nesbit's obligation to ensure that arrangements are made consistent with this Decision and Order in such other location(s) to ensure the continuation and satisfaction of her obligations under this Decision and Order. Any such occurrences shall be noted in writing sent

to the Board by Ms. Nesbit explaining the arrangements made and how the arrangements were carried out.

- ii. Failure to Comply. Any failure by Ms. Nesbit to meet the conditions of the Decision and Order outside of Maine shall constitute a violation of this Decision and Order and may result in the immediate suspension by the Board of Ms. Nesbit's Maine physician assistant license pending hearing, and, following hearing, other sanctions as permitted by law including but not limited to suspension, modification, or revocation of licensure.

k. Maintenance of License.

- i. Ms. Nesbit shall maintain her Maine physician assistant license. In the event that Ms. Nesbit applies for licensure in other jurisdictions during the period of probation, Ms. Nesbit shall notify said jurisdiction of the existence of this Decision and Order.

l. Sanction for Violation of Decision and Order.

- i. Automatic Suspension. Any reliable oral or written report to the Board of violation(s) of the terms and conditions of this Decision and Order by Ms. Nesbit shall result in the immediate, indefinite, and automatic suspension of Ms. Nesbit's Maine physician assistant license. The automatic suspension of Ms. Nesbit's Maine physician assistant license shall become effective at the time that she receives actual notice from the Board that a report of violation(s) has been made. Actual notice can be provided by telephone, in person, in writing, by another means or any combination of the above-referenced means. The indefinite, automatic suspension shall continue until

the Board holds a hearing on the matter, unless the Board earlier determines that the report is without merit or decides that no further sanction is warranted.

- ii. Continued Suspension; Other Sanctions. Ms. Nesbit's indefinite automatic suspension shall continue for such time until the Board holds a hearing and reaches a decision. The Board will hold a hearing within 60 days of the automatic suspension or as soon thereafter as practicable (unless both Ms. Nesbit and the Board agree to hold the hearing later) and shall be held pursuant to the Maine Administrative Procedure Act. The Board may impose such other discipline, including without limitation, fines, further suspension, probation, non-renewal or revocation of licensure, as the Board after hearing deems appropriate.
- m. Designated Copy of Decision and Order. Ms. Nesbit shall have her supervising physician, physician monitor, temporary monitor, and all treatment providers read, date, and sign a copy of the Decision and Order. Ms. Nesbit shall retain a copy of the Decision and Order signed by all of the aforementioned individuals at her Board-approved medical practice locations and shall produce it upon request of the Board or its agent(s). A copy of the signature page shall be made and sent to the Board. Ms. Nesbit agrees that if new individuals assume the roles set forth in this Decision and Order, such individuals shall also read, date and sign the Decision and Order, and she shall send a copy of the updated signature page to the Board. Ms. Nesbit shall provide a copy of this Decision and Order to any hospital or medical practice with whom she becomes affiliated.

n. Address Change. If Ms. Nesbit changes jobs, moves her residence or practice, changes telephone numbers at work or at home, or secures privileges at a hospital, she shall provide written notice to the Board within 10 days of any such change. In addition, Ms. Nesbit shall notify the Board of any attempts to seek licensure in another jurisdiction and shall disclose to the licensing authority in such jurisdiction her status with this Board.

2. Ms. Nesbit to be assessed costs of this proceeding, not to exceed \$500, to be paid within six months.

3. Ms. Nesbit's license to be restored effective immediately as of the date of hearing.

So Ordered.

Dated: November 25, 2013



Maroulla S. Gleaton, M.D.

Chair, State of Maine Board of Licensure in Medicine

V. APPEAL RIGHTS

Pursuant to the provisions of 10 M.R.S. § 8003(5) and 5 M.R.S. § 11002(3), any party that appeals this Decision and Order must file a Petition for Review in the Superior Court within 30 days of receipt of this Order. The petition shall specify the person seeking review, the manner in which they are aggrieved and the final agency action which they wish reviewed. It shall also contain a concise statement as to the nature of the action or inaction to be reviewed, the grounds upon which relief is sought and a demand for relief. Copies of the Petition for Review shall be served by certified mail, return receipt requested, upon the State of Maine Board of Licensure in Medicine, all parties to the agency proceedings, and the Attorney General.

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

In re:)	CONSENT
Charles C. Smith, M.D.)	AGREEMENT
Complaint No. CR13-48)	

This document is a Consent Agreement, effective when signed by all parties, regarding discipline imposed upon the license to practice as a physician in the State of Maine held by Charles C. Smith, M.D. The parties to the Consent Agreement are: Charles C. Smith, M.D. ("Dr. Smith"), the State of Maine Board of Licensure in Medicine ("the Board") and the State of Maine Department of the Attorney General. This Consent Agreement is entered into pursuant to 10 M.R.S. § 8903(5)(B) and 32 M.R.S. § 3282-A.

STATEMENT OF FACTS

1. The Board first issued Dr. Smith a license to practice as a physician in the State of Maine on October 19, 1990. At all times relevant to this complaint, Dr. Smith was licensed as a physician by the Board. Dr. Smith specializes in Otolaryngology.

2. On March 12, 2013, the Board reviewed information received from a storage facility in New Hampshire regarding patient medical records stored in a unit rented by Dr. Smith. According to the information, on January 29, 2013, the Board staff was contacted by the owner of the storage unit and advised that Dr. Smith had rented a storage unit in which he kept confidential patient medical records; however, Dr. Smith was delinquent in paying his storage fees, and the storage company was taking measures to re-possess the storage unit, including removing the lock. According to the information, the storage unit owners had attempted, without success, to contact Dr. Smith regarding this issue. As a result of receiving this information, and out of concern for maintaining the confidentiality of patient medical records, on January 30, 2013, Board staff contacted Dr. Smith's office, and notified his staff about this issue,

and requested that Dr. Smith contact the Board staff to resolve this issue before the end of the day. Shortly thereafter, Board staff received a call from Dr. Smith, who questioned the Board's interest and authority as the medical records were in another state. Board staff informed Dr. Smith that the Board had the authority to investigate the matter. Dr. Smith stated that the matter was "overblown", that he had been out of the country for a couple of months, that the storage company was using extortion to get their money, and that he would take care of the situation. A short time later, Board staff received a voice mail message from Dr. Smith that he had taken care of the situation, which the Board staff later confirmed with the storage company. Following its review of this information, the Board voted to initiate a complaint against Dr. Smith's physician license pursuant to 32 M.R.S. § 3282-A alleging unprofessional conduct based upon Dr. Smith's failure to maintain the security of confidential patient medical records. The Board docketed the complaint as CR13-48 and sent it to Dr. Smith for a written response.

3. On or about April 25, 2013, the Board received a response from Dr. Smith to complaint CR13-48. In his response, Dr. Smith indicated that in 2008 he closed his medical practice in New Hampshire and, in accordance with guidelines from the American Medical Association, notified his patients that they could either pick up their records or notify him where to transfer them. According to Dr. Smith, medical records that were not picked up or transferred were stored in a secure storage unit. According to Dr. Smith, he advised the owners of the storage unit that he was storing only confidential patient medical records in the unit. According to Dr. Smith, he made arrangements to pay the storage fee annually, paying in advance for the 12 months for the unit. According to Dr. Smith, in January 2013, he was out of the country for a great deal of time and did not have access to email. As a result, according to Dr. Smith, he was not aware that his storage fees were in arrears and that the storage company had removed the

lock from the unit. According to Dr. Smith, when he was made aware of this situation on January 30, 2013, he immediately contacted the storage company and had a new lock placed on the unit. According to Dr. Smith, he then made arrangements to avoid further miscommunications by instituting automatic monthly payments from his credit card.

4. On May 14, 2013, the Board reviewed Complaint CR13-48, including all information obtained to date, and voted to request further investigation, which included a request for a written response from Dr. Smith to additional questions concerning this matter.

5. On May 16, 2013, the Board's investigator sent Dr. Smith a letter with questions, including:

- You have a history of receiving late payment notices. Please explain why you allowed your storage unit payment to be late again.
- You received your storage unit invoice for payment before you left the country. Why didn't you pay for the storage unit before you left?
- The storage unit log shows many attempts to call your cell phone. [The owner] stated that many times there was either no answer, or you would just hang up. You stated that you had not used that phone number for five (5) years. Why wasn't the storage company given a current phone number, considering you were storing "confidential" medical records at their facility?

6. On or about May 30, 2013, the Board received a written response from Dr. Smith to its questions, including:

- I received the notice early. My payment was not due until January 1, 2013. I was busy in my practice. It was the holiday season and I was making plans to be away. I was not thinking about making the payment in advance.
- As I mentioned above, I was busy in my practice. It was the holiday season and I was making plans to be away. I was not thinking about making the payment in advance.
- I was using a cell that my current employer supplied to me. I did not give Ms. Pope my cell phone number because it has no answering machine on it. I had given Ms. Pope my office address. I knew she had my correct e-mail address.

I believe our communications up to this point had been satisfactory. Unfortunately given my busy practice and the holiday season, I did not think about the payment or letting her know I would be gone most of January. I had planned on taking care of the payment when I returned. I never dreamed for a minute the lock would be removed. In retrospect, I realize I should have paid before I left.

7. 42 U.S.C. § 1320(d) et seq., otherwise known as the Health Insurance Portability and Accountability Act (HIPAA), provides that medical records of a patient are privileged and confidential and that physicians have a duty to protect the confidentiality of such medical records.

8. The Code of Medical Ethics of the American Medical Association, Section 7.02 provides that: "The [medical] record is a confidential document involving the patient-physician relationship and should not be communicated to a third party without the patient's prior written consent, unless required by law or to protect the welfare of the individual or the community."

9. Maine law, 22 M.R.S. § 1711-C, and New Hampshire law, R.S.A. 332-I, require health care providers, including physicians, to maintain the confidentiality of patient medical records.

10. On July 9, 2013, the Board reviewed complaint CR13-48, including Dr. Smith's response to the Board's additional questions and voted to offer Dr. Smith this Consent Agreement in order to resolve complaint CR13-48 without further proceedings.

11. This Consent Agreement has been negotiated by legal counsel for Dr. Smith and legal counsel for the Board in order to resolve complaint CR13-48 without further proceedings, including an adjudicatory hearing. Absent Dr. Smith's acceptance of this Consent Agreement by signing and dating it in front of a notary and mailing it to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine

04333-0137 on or before October 15, 2013, the matter will be presented to the Board for further action.

12. By signing this Consent Agreement, Dr. Smith waives any and all objections to, and hereby consents to allow the legal counsel to the Board to present this Consent Agreement to the Board for possible ratification.

COVENANTS

In lieu of proceeding to an adjudicatory hearing in this matter, Dr. Smith and the Board agree to the following:

13. Dr. Smith admits that with regard to complaint CR13-48 the Board has sufficient evidence from which it could reasonably conclude that:

- a. He stored confidential patient medical records in a storage unit in New Hampshire;
- b. He was aware that in order to continue to store the confidential patient medical records in the storage unit that he needed to make timely and sufficient payment of fees;
- c. He was aware that he was required to pay fees to the storage company on or before January 1, 2013, in order to continue to securely store the confidential patient medical records;
- d. He failed to pay the storage fees on or before January 1, 2013;
- e. He failed to communicate with the storage company that he was leaving the United States and would pay the storage fees when he returned;
- f. He failed to provide the storage company with an up-to-date telephone number so that it might contact him;

g. The storage company removed the lock on the storage unit and contacted the New Hampshire Board of Medicine and the Maine Board of Licensure in Medicine about what to do with the confidential patient medical records;

h. Dr. Smith had a legal and ethical obligation to safeguard the confidentiality of patient medical records;

i. Dr. Smith failed to meet his ethical and legal obligations to safeguard the confidentiality of the patient medical records in this case.

Dr. Smith admits that such conduct constitutes unprofessional conduct and grounds for discipline pursuant to 32 M.R.S. § 3286(2)(F).

14. As discipline for the conduct described in paragraphs 1-13 above pertaining to complaint CR13-48, Dr. Smith agrees to accept, and the Board agrees to issue, the following discipline:

a. A REPRIMAND. In this case, by failing to communicate with and make timely payment to the storage company, Dr. Smith breached his duty to his patients to maintain the confidentiality of their patient medical records. The storage company was unable to contact Dr. Smith by telephone because he had not provided it with a current telephone number, and he failed to inform it that he would be out of the country and would pay the storage fees upon his return. This resulted in the storage company removing the lock on the storage unit, thereby compromising the security and confidentiality of the patient medical records. Although Dr. Smith attributed his failure to pay the storage fees to his busy practice and the holiday season, neither of these reasons supersedes his duty to take all reasonable measures necessary to safeguard patient medical records.

b. A MONETARY FINE of One Thousand Dollars and Zero Cents (\$1,000.00). Dr. Smith shall ensure that he pays the monetary penalty within thirty (30) days following the execution of this Consent Agreement. Payment shall be made by certified check or money order made payable to "Treasurer, State of Maine," and be remitted to Maureen Lathrop, Investigative Secretary, Maine Board of Licensure in Medicine, 137 State House Station, Augusta, Maine 04333-0137.

15. Violation by Dr. Smith of any of the terms or conditions of this Consent Agreement shall constitute grounds for discipline, including but not limited to modification, suspension, or revocation of licensure or the denial of re-licensure.

16. Pursuant to 10 M.R.S. § 8003(5) the Board and Dr. Smith agree that the Board has the authority to issue an order, following notice and hearing, imposing further discipline, including revocation or suspension of his license, in the event that he fails to comply with any of the terms or conditions of this Consent Agreement.

17. Dr. Smith waives his right to a hearing before the Board or any court regarding all findings, terms and conditions of this Consent Agreement. Dr. Smith agrees that this Consent Agreement and Order is a final order resolving complaint CR13-48. This Consent Agreement is not appealable and is effective until modified or rescinded by agreement of all of the parties hereto.

18. The Board and the Office of the Attorney General may communicate and cooperate regarding Dr. Smith or any other matter relating to this Consent Agreement.

19. This Consent Agreement is a public record within the meaning of 1 M.R.S. § 402 and will be available for inspection and copying by the public pursuant to 1 M.R.S. § 408.

20. This Consent Agreement constitutes discipline and is an adverse licensing action that is reportable to the National Practitioner Data Bank (NPDB) and the Federation of State Medical Boards (FSMB).

21. Nothing in this Consent Agreement shall be construed to affect any right or interest of any person not a party hereto.

22. The Board and Dr. Smith agree that no further agency or legal action will be initiated against him by the Board based upon the facts described herein except or unless he fails to comply with the terms and conditions of this Consent Agreement. The Board may however consider the conduct described above as evidence of a pattern of misconduct in the event that similar true allegations are brought against Dr. Smith in the future. The Board may also consider the fact that discipline was imposed by this Consent Agreement in determining appropriate discipline in any further complaints against Dr. Smith's Maine physician license.

23. Dr. Smith has been represented by Sandra L. Rothera, Esq., who has participated in the negotiation of this Consent Agreement on his behalf.

24. Dr. Smith acknowledges by his signature hereto that he has read this Consent Agreement, that he has had an opportunity to consult with an attorney before executing this Consent Agreement, that he executed this Consent Agreement of his own free will and that he agrees to abide by all terms and conditions set forth herein.

25. For the purposes of this Consent Agreement, "execution" shall mean the date on which the final signature is affixed to this Consent Agreement.

I, CHARLES C. SMITH, M.D., HAVE READ AND UNDERSTAND THE FOREGOING CONSENT AGREEMENT AND AGREE WITH ITS CONTENTS AND TERMS. I FURTHER UNDERSTAND THAT BY SIGNING THIS AGREEMENT, I WAIVE CERTAIN RIGHTS, INCLUDING THE RIGHT TO A HEARING BEFORE THE BOARD. I SIGN THIS CONSENT AGREEMENT VOLUNTARILY, WITHOUT ANY THREAT OR PROMISE. I UNDERSTAND THAT THIS CONSENT AGREEMENT CONTAINS THE ENTIRE AGREEMENT AND THERE IS NO OTHER AGREEMENT OF ANY KIND, VERBAL, WRITTEN OR OTHERWISE.

DATED:

10/10/13

Charles C. Smith
CHARLES C. SMITH, M.D.

STATE OF

Maine

Pendscot, S.S. (County)

Personally appeared before me the above-named Charles C. Smith, M.D., and swore to the truth of the foregoing based upon his own personal knowledge, or upon information and belief, and so far as upon information and belief, he believes it to be true.

DATED:

10/10/13

Sandra L. Rothera
NOTARY PUBLIC/ATTORNEY
MY COMMISSION ENDS: _____

DATED:

10/10/13

Sandra L. Rothera
SANDRA L. ROTHERA, ESQ.
ATTORNEY FOR DR. SMITH

STATE OF MAINE
BOARD OF LICENSURE IN MEDICINE

DATED:

11/12/13

Maroulla S. Gleaton
MAROULLA S. GLEATON, M.D., Chairman

STATE OF MAINE DEPARTMENT
OF THE ATTORNEY GENERAL

DATED:

11/12/13

Dennis E. Smith
DENNIS E. SMITH
Assistant Attorney General

Effective Date:

11/12/13